



OFFICE OF THE COMMISSIONER OF INSURANCE
STATE OF LOUISIANA

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LOUISIANA
Directive Number 175
January 8, 2003

LSA-R.S. 22: 2
LSA-R.S. 22:620-621
LSA-R.S. 22:653
REGULATION 78

**NOTICE TO ALL INSURERS AND RATE SERVICE
ORGANIZATIONS LICENSED OR DOING BUSINESS IN LOUISIANA**

RE: Policy Forms – Subrogation Provisions

Regulation 78, which took effect on January 1, 2003, was promulgated in order to streamline and expedite the policy forms review process.¹ The purpose of this Directive is to further the accomplishment of that goal.

While insurers are free to include whatever provisions they choose in their policies, the provisions must be consistent with the laws and public policy of Louisiana. It has long been the public policy of this state, as expressed in Louisiana jurisprudence, that subrogation provisions in insurance contracts cannot harm the insured. This same rule of public policy applies to reimbursement provisions in insurance contracts. Further, an insurer invoking a subrogation or reimbursement provision is required by the public policy of this state to contribute to the attorney's fees incurred in obtaining a recovery from the third party.

If in accordance with Regulation 78 an authorized insurer certifies compliance and it is later discovered that the form contains language that conflicts with the public policy of this state, the insurer will be subject to sanctions including but not limited to the imposition of such fines as are authorized by law. The Commissioner will consider for approval language that clearly conveys to the insured that any right of recovery from third parties on the part of the insurer, whether by subrogation or reimbursement, is subordinate to the insured's right to be fully compensated for his damages; and that the insurer is obligated to share in the legal expenses incurred. The commissioner will not approve policy language that excludes and/or reduces coverage for expenses incurred as a result of the treatment of injury or sickness caused by the fault of a third party. See LSA-R.S. 22:621(3). To expedite the review process and reduce the possibility that corrective action will be needed insurers may wish to consider using the language found in Appendix A or language substantially similar thereto.

¹ As used herein, the term policy(s) has the same meaning as ascribed in LSA-R.S. 22:620A(2), and includes any certificate of coverage or any other evidence of coverage, or a subscriber agreement.

Authorized insurers should review their policy forms that are on file with the LDI to determine if any forms contain subrogation or reimbursement provisions that do not conform to the public policy of this state. If so, such forms should be revised and re-filed with the LDI in accordance with Regulation 78 §§ 10107.H, 10109.H and 10113.H.

Surplus lines insurers are hereby reminded that the use of policy provisions that are contrary to the public policy of this state constitutes sufficient grounds for removal from the list of approved unauthorized insurers pursuant to LSA-R.S. 22:1262.1D.

A handwritten signature in black ink, consisting of a large, stylized 'J' followed by a series of loops and a long, sweeping horizontal line extending to the right.

J. ROBERT WOOLEY
ACTING COMMISSIONER OF INSURANCE

Appendix A

SUBROGATION

To the extent that benefits are provided or paid under this Policy, we shall be subrogated to all rights of recovery which any Covered Insured may acquire against any other party for the recovery of the amount paid under this Policy, however our right of subrogation is secondary to the right of the Covered Insured to be fully compensated for his damages. The Covered Insured agrees to deliver all necessary documents or papers, to execute and deliver all necessary instruments, to furnish information and assistance, and to take any action We may require to facilitate enforcement of our right of subrogation. We agree to pay our portion of the Insured Person's attorneys' fee or other costs associated with a claim or lawsuit to the extent that we recover any portion of the benefits paid under this policy pursuant to our right of subrogation.

RIGHT OF REIMBURSEMENT

To the extent that benefits are provided or paid under this Policy [Benefit Plan] the Covered Insured [Member] agrees that if he fully recovers his damages from a third party, then he will reimburse Us the portion of the damages recovered for the expenses incurred by the Covered Insured that were provided or paid by Us. We agree to pay our portion of the Insured Person's attorneys' fee or other costs associated with a claim or lawsuit to the extent that we recover any portion of the benefits paid under this policy pursuant to our right of reimbursement.